IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

Crl.Rev.Pet.No. 2045 of 2007()

CRA.146/2006 of SESSIONS COURT, TRIVANDRUM
CC.553/2001 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, NEYYATTINKARA

.....

REVN. PETITIONER: APPELLANT

NAGENDRAN,
C.NO.9688, CENTRAL PRISON, TRIVANDRUM.

BY ADV. SRI.K.P. HARISH(STATE BRIEF)

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI. K.S. SIVAKUMAR, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 30/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR , J

==========

CRL. R.P. NO. 2045 OF 2007

==========

Dated this the 30th day of October, 2007.

ORDER

The revision petitioner, who was the sole accused in C.C. No. 553 of 2001 on the file of the JFCM-I, Neyyattinkara for offences punishable under Sections 457, 461 and 380 I.P.C, challenges the conviction entered and the sentence passed concurrently against him by the courts below:

2. The case of the prosecution is that at about 2 a.m. on 14.01.1999 the accused committed lurking house tresspass by night in the house of Balakrishna Pillai (CW2) situated on the eastern side of Moonukallinmoodu-Kodangavila road at Ooruttukala after breaking open the locks of the front grill and southern room using a crowbar and committed theft of Rs.2 lakhs of cash kept in a brief case and gold ornaments weighing 12 ½ soverigns kept in the drawer of a cupboard in the southern room. The accused subsequently sold the ornaments at a jewellery in Neyyattinkara and by using the sale proceeds, he purchased 13 cents of land at Kunnathukal village. The accused has thereby committed offences punishable under Sections 467, 461 and 380 IPC.

3. The prosecution examined 10 witnesses as PWs 1 to 10 and got marked 5 documents as Exts.P1 to P5 and 6 material objects as MOs 1 to 6.

4. The accused denied the incriminating circumstances appearing against him in the evidence for the prosecution. He did not adduce any defence evidence when called upon to do so.

5. The learned Magistrate, after trial, as per judgment dated 03.02.2006 convicted the revision petitioner of the offences punishable under Sections 457 and 380 IPC and sentenced him to undergo rigorous imprisonment for two years and to pay a fine of Rs.2000/- and on default to pay the fine, to suffer imprisonment for one month under Section 457 IPC and to rigorous imprisonment for three years and to pay a fine of Rs.3000/- and on default to pay the fine, to suffer imprisonment for two months under Section 380 IPC. The sentences were directed to run consecutively.

6. On an appeal preferred by the revision petitioner before the Sessions Court, Thiruvananthapuram as Crl. Appeal No. 146 of 2006, the learned Sessions Judge as per judgment dated 07.10.2006 confirmed the conviction and sentence, but directed that the sentence shall concurrently instead of consecutively. It is the said judgment

which is assailed in this revision preferred from the Central Prison, Thiruvananthapuram.

7. I heard Advocate Shri. K.P. Harish, the State Brief and Advocate Shri. K.S. Sivakumar, the learned Public Prosecutor appearing on the defence side.

8. What has been unravelled by the oral and documentary evidence adduced in the case is the following:-

9. Balakrishna Pillai (CW2), who was a widower aged 84 years was staying alone in the house by name 'Kadichal Padmavilasom' by the side of Moonnukallinmoodu- Kodangavila road at Ooruttukala within the limit of the Neyyattinkara police station. On 14.01.1999 the said Balakrishna Pillai had gone to the nearby house of one of his daughter and had slept there during the night. Next day morning when he returned to the house, he found that his house had been burgled and gold ornaments and cash kept in the wall almirah were found missing. On getting information, PW1 who is the son-in-law and PW2 who is the daughter of the said Balakrishna Pillai and who is also the wife of PW1 went to the said place to discover that a burglary had taken place in their house during the previous night. PW1 lodged a complaint before the police on the basis of which the Neyyattinkara

police registered the crime as Case No.25/99. The locks on the collapsible gate and the door of the south western room were found broken. A pick axe and broken piece of lock were lying on the floor. PW2 after making some enquiry was able to discover that a golden necklace weighing 3 sovereigns, a chain of "sarapoli' fashion weighing 3 sovereigns, another chain of 'Dalapathi' fashion weighing 2.5 sovereigns and two bangles of one sovereign each, a pair of stone-studded ear rings weighing one sovereign, a gold ring weighing half a sovereign and cash worth Rs.2 lakhs were found missing in the house. It was at 10 a.m. on 15.01.1999 that PW1 went for lodging a complaint before the Neyyattinkara Police Station. The revision petitioner was arrested by PW7 from Kunnathukal junction at 8 p.m. on 17.02.2000 in connection with Vellarada police station crime No. 44/2000. While in custody the accused gave Ext.P4(a) confession statement to PW7. Pursuant to the said confession statement, the accused led the police party to the jewellery shop of PW10 Sundaram from whom the police seized MOs 1 to 4 gold ornaments, which according to PW10, were purchased by him from the accused. PW10 had given a total amount of Rs.25,000/- for the gold ornaments weighing 10.5 sovereigns. Subsequently, PWs 1 and 2 had been in

Neyyattinkara police station from where they identified MOs 1 to 4 as the gold ornaments stolen from their house. The evidence of PWs 3 and 4, husband and wife would go to show that from the sale proceeds obtained by the accused by selling MOs 1 to 4, he purchased 13 cents of property comprised in RS 293/18 of Kunnathukal village from PW3, Smt. Sethulekshimi Amma, the husband of PW4, Sukumaran Nair as evidenced by MO6 sale deed dated 21.01.1999.

10. While in the case of acquisition of immovable property as per MO6 sale deed, there is no acceptable evidence to conclusively show that the said property was acquired with the sale proceeds of the four items of ornaments (MOs 1 to 4) stolen from the house of PWs 1 and 2, the recovery evidence in relation to MOs 1 to 4 clearly proves the case of the prosecution that it was the accused who had stolen these gold ornaments. It was eventually recovered from PW10, the jeweller. It is true that the gold ornaments were looking fresh as against the gold ornaments which PWs 1 and 2 had allegedly lost. But, PW10 has admitted that they were refurbished after he purchased the same. Both PWs 1 and 2, without any difficulty, identified MOs 1 to 4 as the ornaments belonging to PWs 2 and her monther-in-law. Under these circumstances, the conviction was rightly entered against the

revision petitioner and the same is confirmed.

11. What now survives for consideration is the adequacy or otherwise of the sentence imposed on him. The revision petitioner is admittedly a habitual offender and penal servitude by way of incarceration alone can serve as an effective disincentive against the persons like the revision petitioner who daringly commit burglary and theft of valuables. The sentence imposed on the revision petitioner cannot be said to be harsh or disproportionate or excessive having regard to the offences committed and also having regard to the antecedents of the petitioner.

In the result, the revision petition fails and is accordingly dismissed confirming the conviction entered and sentence passed on the revision petitioner.

V. RAMKUMAR, JUDGE.

rv